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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CHRIS KOHLER,	)	Case No. EDCV 11-01246 VAP
	)	(OPx)
Plaintiff,	)	
	)	<b>ORDER GRANTING DEFENDANT'S</b>
v.	)	<b>CROSS-MOTION FOR SUMMARY</b>
	)	<b>JUDGMENT; DISMISSING WITHOUT</b>
BED BATH & BEYOND OF	)	<b>PREJUDICE PLAINTIFF'S</b>
CALIFORNIA, LLC	)	<b>REMAINING STATE LAW CLAIMS</b>
	)	<b>[Motion filed on May 25,</b>
Defendant.	)	<b>2012]</b>

Before the Court is a Cross-Motion for Summary Judgment filed by Defendant Bed Bath & Beyond, LLC. After considering the papers and arguments in support of and in opposition to the Motion, the Court GRANTS Defendant's Motion.

**I. PROCEDURAL HISTORY**

On August 4, 2011, Plaintiff Chris Kohler ("Plaintiff") filed a complaint ("Complaint") alleging claims against Defendant Bed Bath & Beyond, LLC

1 ("Defendant") and Defendant MGP IX Reit, LLC<sup>1</sup> for  
2 violations of: (1) the Americans with Disabilities Act  
3 ("ADA"); (2) the California Disabled Persons Act (Cal.  
4 Civ. Code § 54); (3) Unruh Civil Rights Act (Cal. Civ.  
5 Code § 51); and (4) California Health & Safety Code §§  
6 19953-19959. (Doc. No. 1.) Plaintiff, who is paralyzed  
7 from the waist down and uses a wheelchair, alleges that  
8 he encountered illegal barriers to access when he visited  
9 the Bed Bath & Beyond store in Murrieta, California ("the  
10 Store").

11  
12 On May 21, 2012, Plaintiff filed a motion for summary  
13 judgment, or partial summary judgment in the alternative.  
14 ("Plaintiff's May 21 MSJ" (Doc. No. 21).) The Court, in  
15 order to provide Plaintiff with time to correct his  
16 filing, informed Plaintiff's counsel on May 24, 2012,  
17 that the May 21 MSJ did not comply with the Local Rules  
18 and the Court's Standing Order. (See Doc. No. 32.)

19  
20 On May 25, 2012, Defendant filed its Opposition to  
21 Plaintiff's May 21 MSJ ("Opposition" or "Opp'n" (Doc.  
22 Nos. 24)), which Defendant combined with its motion  
23 presently before the Court, Defendant's Cross-Motion for  
24 Summary Judgment<sup>2</sup> ("Cross-MSJ" (Doc. No. 28)). In

25  
26 <sup>1</sup> Plaintiff dismissed Defendant MGP IX Reit, LLC on  
October 24, 2011. (Doc. No. 10.)

27 <sup>2</sup> As this document contains both Defendant's  
28 (continued...)

1 support of its Cross-MSJ, Defendant filed the following  
2 documents:

- 3 1. Statement of Disputed and Undisputed Facts (Doc.  
4 No. 28-2);<sup>3</sup>
- 5 2. Request for Judicial Notice (requesting the  
6 Court take notice of the docket in Rush v. Denco  
7 Enterprises, Inc., ---F. Supp. 2d---, 2012 WL  
8 1423584, (C.D. Cal. Apr. 24, 2012)) (Doc. No.  
9 28-3) and an image of the Rush docket as of May  
10 25, 2012 (attached to Cross-MSJ as "Exhibit 1"  
11 (Doc. No. 28-4));
- 12 3. Declaration of Ross Duskin ("Duskin  
13 Declaration") (Doc. No. 29); and
- 14 4. Declaration of Larry Wood ("Wood Declaration")  
15 (Doc. No. 30).

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17  
18  
19 

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<sup>2</sup>(...continued)

20 Opposition and its Cross-MSJ, Defendant filed the  
21 document twice on May 25, 2012, under two different  
22 docket titles. The document is titled "Opposition" at  
23 Docket Number 24, with supporting documents either  
24 attached at Docket Number 24 or filed at Docket Numbers  
25 25-27; the same document is titled "Cross Motion for  
26 Summary Judgment" at Docket Number 28, with supporting  
27 documents either attached at Docket Number 28 or filed at  
28 Docket Numbers 29 and 30.

25 <sup>3</sup> This document first reproduces Plaintiff's  
26 Undisputed Material Facts and Evidence from Plaintiff's  
27 May 21 MSJ and sets forth Defendant's Response and  
28 Supporting Evidence. (Defendant's Statement of Disputed  
and Undisputed Facts at 2-7.) The document then provides  
Defendant's Statement of Additional Undisputed Material  
Facts ("SAUF"). (Id. at 7-8.)

1        Because Plaintiff failed to correct his deficient May  
2 21 MSJ, the Court denied it without prejudice on May 31,  
3 2012, allowing Plaintiff to refile "a Motion that  
4 complies in all respects with . . . the Local Rules of  
5 the Central District of California[] and the Standing  
6 Order of this Court." (See Doc. No. 32.)

7  
8        On June 1, 2012, Plaintiff filed a new Motion for  
9 Summary Judgment, which, other than the corrected  
10 technical deficiencies, was the same as his May 21 MSJ.  
11 (Doc. No. 34.) That same day, Plaintiff filed a third  
12 version of his Motion for Summary Judgment ("Plaintiff's  
13 MSJ" (Doc. No. 36), which was the same as the previous  
14 motion except for minor, non-substantive changes.  
15 Plaintiff withdrew his second filed MSJ on June 4, 2012.  
16 (Doc. No. 38.) Plaintiff's MSJ is set for hearing before  
17 the Court on July 2, 2012.

18  
19        Plaintiff filed his Opposition to Defendant's Cross-  
20 MSJ on June 4, 2012 (Doc. No. 39), along with his  
21 Response to Defendant's SAUF ("SAUF Response" (Doc. No.  
22 39-1)), a notice of deposition of Plaintiff sent by  
23 Defendant (Doc. No. 39-2), Plaintiff's declaration  
24 ("Kohler Declaration" (Doc. No. 39-3)), and a declaration  
25 submitted in a different case on a similar issue (Doc.  
26 No. 39-4).

1 On June 11, 2012, Defendant replied to Plaintiff's  
2 Opposition. (Doc. No. 40.) Defendant supported its  
3 Reply by filing the declaration of Matthew S. Kenefick,  
4 one of Defendant's counsel ("Kenefick Declaration").  
5 (Doc. No. 41.) The Kenefick Declaration attached  
6 excerpts of Plaintiff's deposition (Doc. No. 41-1).  
7 Pursuant to Federal Rule of Evidence 201, Defendant  
8 attached and requested the Court take notice of the  
9 following documents filed in Rush: three declarations  
10 from Certified Access Specialists filed by the Rush  
11 defendant after summary judgment was granted to  
12 plaintiff<sup>4</sup> (Doc. Nos. 41-2, 41-3, 41-4) and the  
13 plaintiff's Second Amended Complaint (Doc. No. 41-5).  
14

15 Defendant filed an ex parte application on June 19,  
16 2012, unsuccessfully requesting the Court consolidate the  
17 hearings set for Defendant's Cross-MSJ and Plaintiff's  
18 MSJ (Doc. Nos. 45, 46).  
19

## 20 II. STANDING UNDER THE ADA

### 21 A. Legal Standard

22 Title III of the ADA provides that "[n]o individual  
23 shall be discriminated against on the basis of disability  
24 in the full and equal enjoyment of the goods, services,  
25 facilities, privileges, advantages, or accommodations of  
26

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27 <sup>4</sup> The Rush declarations address the same question  
28 regarding ADA requirements presented in the instant  
Motion.

1 any place of public accommodation by any person who owns,  
2 leases (or leases to), or operates a place of public  
3 accommodation." 42 U.S.C. § 12182(a).

4  
5 "[T]hose who seek to invoke the jurisdiction of the  
6 federal courts must satisfy the threshold requirement  
7 imposed by Article III of the Constitution by alleging an  
8 actual case or controversy." City of Los Angeles v.  
9 Lyons, 461 U.S. 95, 101 (1983). To comply with that  
10 requirement, litigants must demonstrate a "personal  
11 stake" in the suit. Summers v. Earth Island Institute,  
12 555 U.S. 488, 493 (2009). A plaintiff has a personal  
13 stake in the suit when "(1) it has suffered an 'injury in  
14 fact' that is (a) concrete and particularized and (b)  
15 actual or imminent, not conjectural or hypothetical; (2)  
16 the injury is fairly traceable to the challenged action  
17 of the defendant; and (3) it is likely, as opposed to  
18 merely speculative, that the injury will be redressed by  
19 a favorable decision." Friends of the Earth, Inc. v.  
20 Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 180-81  
21 (2000).

22  
23 Generally, where a plaintiff seeks declaratory and  
24 injunctive relief, the plaintiff also must show a  
25 significant possibility of future harm; it is  
26 insufficient to demonstrate only a past injury. See San  
27 Diego County Gun Rights Committee v. Reno, 98 F.3d 1121,  
28

1 1126 (9th Cir. 1996). The party invoking federal  
2 jurisdiction bears the burden of establishing that each  
3 element of standing is met. Lujan v. Defenders of  
4 Wildlife, 504 U.S. 555, 561 (1992).

5  
6 To establish standing under Title III of the ADA, "a  
7 plaintiff must allege that: '(1) he is disabled within  
8 the meaning of the ADA; (2) the defendant is a private  
9 entity that owns, leases, or operates a place of public  
10 accommodation; and (3) the plaintiff was denied public  
11 accommodations by the defendant because of his  
12 disability.'" Kohler v. CJP, Ltd., 818 F. Supp. 2d 1169,  
13 1176 (C.D. Cal. 2011) (quoting Ariz. ex rel. Goddard v.  
14 Harkins Amusement Enters., 603 F.3d 666, 670 (9th Cir.  
15 2010)). An injured plaintiff can pursue injunctive  
16 relief under the ADA by "[d]emonstrating an intent to  
17 return to a noncompliant accommodation" or by  
18 demonstrating that "he is deterred from visiting a  
19 noncompliant public accommodation because he has  
20 encountered barriers related to his disability there."  
21 Chapman v. Pier 1 Imports (U.S.) Inc., 631 F.3d 939, 949  
22 (9th Cir. 2011). A plaintiff is "deterred" under Title  
23 III of the ADA when he either (1) identifies how at least  
24 one of the alleged violations threatens to deprive him of  
25 full and equal access due to his disability if he were to  
26 return to the place of public accommodation, or (2)  
27 identifies how at least one of the alleged violations  
28

1 deters him from visiting the place of public  
2 accommodation due to his disability. See id. at 955. In  
3 short, a plaintiff must connect the alleged ADA  
4 violations to his disability in order to establish  
5 standing. Id. at 954; Kohler, 818. F. Supp. at 1174.

6  
7 **B. Discussion**

8 Defendant argues that the Court should grant summary  
9 judgment in its favor primarily because all of the  
10 barriers Plaintiff alleges "either do not constitute  
11 disabled access barriers as a matter of law or do not  
12 exist." (Cross-MSJ at 2.) In the alternative, Defendant  
13 argues that, assuming such barriers do exist, the Court  
14 should grant summary judgment in Defendant's favor  
15 because Plaintiff fails to meet the injury-in-fact  
16 jurisdictional requirement. (Id. at 16.) As adequately  
17 alleging an injury in fact is constitutionally required  
18 for this case to be properly before this Court, the Court  
19 addresses Defendant's standing claim first.

20  
21 Defendant cites Chapman for the proposition that, to  
22 satisfy the injury-in-fact requirement, "Plaintiff must  
23 establish that he encountered the claimed disabled access  
24 barriers and that the barriers affected his disability in  
25 a manner that acted to deny him full and equal status."  
26 (Cross-MSJ at 16 (citing 631 F.3d at 954-55).) Defendant  
27 argues that "Plaintiff utterly fails this standard"



1 because he "merely states, in the hypothetical tense, how  
2 each alleged condition could affect him if he were to  
3 encounter them - not that it did affect him. Plaintiff  
4 does not declare that he in fact visited the men's  
5 restroom . . . ." (Id. at 16-17 (emphasis in original).)  
6 Therefore, Defendant argues, "Plaintiff has failed his  
7 burden to establish he has standing." (Id. at 17.)

8  
9 Defendant is wrong. The Central District of  
10 California recently rejected a virtually identical  
11 argument involving a defendant's motion to dismiss  
12 against the same plaintiff. In Kohler v. CJP, Ltd., 818  
13 F. Supp. 2d at 1174-75, the court found that

14 Kohler does more than merely identify barriers  
15 that he encountered at the Shopping Center; he  
16 also provides a brief description of how each  
17 barrier affected him because of his disability.  
18 For example, . . . Kohler identifies tow away  
19 signage that is posted incorrectly, and explains  
20 that "[w]ithout the correct signage displayed,  
21 Kohler cannot have vehicles towed that are  
22 illegally parked in disabled parking spaces."  
23 Although [Defendant] is correct that Kohler "fails  
24 to . . . alleg[e] that he *did* have a need to have  
25 a vehicle towed," the explanation is sufficient to  
26 satisfy *Chapman* since it gives rise to a plausible  
27 inference that Kohler will be deterred from the  
28 purported violation from visiting the Shopping  
Center in the future. . . . Because Kohler has  
adequately pled the barriers he encountered, the  
manner in which those barriers prevented him from  
gaining full access to the facility, and the fact  
that the barriers have deterred him from visiting  
the Shopping Center, he has sufficiently alleged  
standing as to each barrier identified in his  
complaint.

26 The Court finds the same analysis applies here  
27 in the context of summary judgment, though to an even  
28

1 stronger degree given the Court's consideration of  
 2 Plaintiff's declaration rather than just the  
 3 complaint, which was the only document available in  
 4 Kohler to support standing. Plaintiff declared that  
 5 he twice visited Defendant's store, encountered  
 6 accessibility barriers there that denied him full and  
 7 equal access to the store due to the fact that he is  
 8 paralyzed and confined to a wheelchair, and would  
 9 return to the store to make purchases were those  
 10 barriers removed. (P.'s Mot. for Summary Judgment  
 11 (May 21, 2012), Kohler Decl. ¶¶ 2-4.) Plaintiff then  
 12 declares how those barriers deter him from returning  
 13 to the store on account of his disability, e.g., by  
 14 "mak[ing] it difficult to open the restroom door,"  
 15 "reach the toilet tissue," and "maneuver out of the  
 16 restroom"; by making it so "[w]hen I use the sink, I  
 17 must struggle not to burn my legs on the incompletely  
 18 wrapped pipes"; or by making "opening and closing the  
 19 door . . . difficult from my wheelchair." (Id. ¶  
 20 7(a-g).) These alleged injuries are not  
 21 "hypothetical,"<sup>5</sup> as Defendant claims, and Plaintiff's

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23 <sup>5</sup> Defendant confusingly asserts that Plaintiff  
 24 "merely states" each alleged barrier "in the hypothetical  
 25 tense," i.e., "how each alleged condition could affect  
 26 him if he were to encounter them." (Cross-MSJ at 17  
 27 (emphasis in original).) Despite the words not actually  
 28 appearing in the pertinent section of Plaintiff's  
 Declaration, Defendant adds emphasis to its auxiliary  
 verb - "could," the past indicative tense of "can" - and  
 its past tense verb - "were," used as the present  
 subjective conjugation of "be." See THE CHICAGO MANUAL OF

(continued...)

1 evidence of the injuries appears stronger than the  
2 evidence found sufficient for standing in Kohler.  
3 Like in Kohler, Plaintiff here sufficiently states  
4 how the violations deter him from returning, but he  
5 also submits sufficient evidence of the injury he  
6 suffered at the time he encountered the barriers.  
7 For example, Plaintiff declares, "The disabled-  
8 accessible toilet stall in the men's restroom lacks a  
9 handle below the door latch. Without a handle on the  
10 door, opening and closing the door is difficult from  
11 my wheelchair." (Id. ¶ 7(g).) To support this  
12 allegation, Plaintiff submits a photograph of the  
13 alleged barrier that was taken the same day he claims  
14 to have encountered the barrier. (Id. ¶ 6, Ex. B at  
15 8.)

16  
17 Chapman clarifies the ADA's standing requirement  
18 for a Plaintiff to identify the nexus between the  
19 alleged ADA-noncompliant barrier and the plaintiff's  
20

21 <sup>5</sup>(...continued)  
22 STYLE §§ 5.137, 5.143, 5.151 (16th ed. 2010). While use  
23 of the subjunctive mood would "express[] an action or  
24 state as . . . hypothetical" (Id. § 5.120); Plaintiff  
25 consistently employs the indicative mood, which here is  
26 "used to express facts" (Id. § 5.118) and the present  
27 tense, which here is "used . . . to express a habitual  
28 action or general truth" (Id. § 5.123). This is far from  
simply a matter of grammatical accuracy. Plaintiff's  
grammatical style tracks the ADA's substance: Plaintiff  
describes the barrier as he encountered it on that day  
while simultaneously describing how the barrier will and  
does habitually deter him from returning to the store due  
to his disability.

1 disability status. Chapman does not establish the  
2 heightened evidentiary standard that Defendant  
3 appears to assert. As the Central District of  
4 California found in Kohler, this Court too finds Mr.  
5 Kohler "has sufficiently alleged standing as to each  
6 barrier identified in his complaint." 818 F. Supp.  
7 2d at 1174-75.

8  
9 **III. DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT ON**  
10 **PLAINTIFF'S ADA CLAIMS**

11 **A. Legal Standard**

12 A court shall grant a motion for summary  
13 judgment when there is no genuine issue as to any  
14 material fact and the moving party is entitled to  
15 judgment as a matter of law. Fed. R. Civ. P. 56(a);  
16 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48  
17 (1986). The moving party must show that "under the  
18 governing law, there can be but one reasonable  
19 conclusion as to the verdict." Anderson, 477 U.S. at  
20 250.

21 Generally, the burden is on the moving party to  
22 demonstrate that it is entitled to summary judgment.  
23 See Margolis v. Ryan, 140 F.3d 850, 852 (9th Cir.  
24 1998) (citing Anderson, 477 U.S. at 256-57); Retail  
25 Clerks Union Local 648 v. Hub Pharmacy, Inc., 707  
26 F.2d 1030, 1033 (9th Cir. 1983). The moving party  
27 bears the initial burden of identifying the elements  
28

1 of the claim or defense and evidence that it believes  
2 demonstrates the absence of an issue of material  
3 fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323  
4 (1986). Because summary judgment is a "drastic  
5 device" that cuts off a party's right to present its  
6 case to a jury, the moving party bears a "heavy  
7 burden" of demonstrating the absence of any genuine  
8 issue of material fact. See Avalos v. Baca, No. 05-  
9 CV-07602-DDP, 2006 WL 2294878 (C.D. Cal. Aug. 7,  
10 2006) (quoting Nationwide Life Ins. Co. v. Bankers  
11 Leasing Ass'n, Inc., 182 F.3d 157, 160 (2d Cir.  
12 1999)).

13  
14 Where the non-moving party has the burden at  
15 trial, however, the moving party need not produce  
16 evidence negating or disproving every essential  
17 element of the non-moving party's case. Celotex, 477  
18 U.S. at 325. Instead, the moving party's burden is  
19 met by pointing out that there is an absence of  
20 evidence supporting the non-moving party's case.  
21 Id.; Horphag Research Ltd. v. Garcia, 475 F.3d 1029,  
22 1035 (9th Cir. 2007).

23  
24 The burden then shifts to the non-moving party  
25 to show that there is a genuine issue of material  
26 fact that must be resolved at trial. Fed. R. Civ. P.  
27 56(c); Celotex, 477 U.S. at 324; Anderson, 477 U.S.

1 at 256. The non-moving party must make an  
2 affirmative showing on all matters placed in issue by  
3 the motion as to which it has the burden of proof at  
4 trial. Celotex, 477 U.S. at 322; Anderson, 477 U.S.  
5 at 252. See also William W. Schwarzer, A. Wallace  
6 Tashima & James M. Wagstaffe, Federal Civil Procedure  
7 Before Trial § 14:144. A genuine issue of material  
8 fact will exist "if the evidence is such that a  
9 reasonable jury could return a verdict for the non-  
10 moving party." Anderson, 477 U.S. at 248.

11  
12 In ruling on a motion for summary judgment, a  
13 court construes the evidence in the light most  
14 favorable to the non-moving party. Scott v. Harris,  
15 550 U.S. 372, 378, 380 (2007); Barlow v. Ground, 943  
16 F.2d 1132, 1135 (9th Cir. 1991); T.W. Elec. Serv.  
17 Inc. v. Pac. Elec. Contractors Ass'n, 809 F.2d 626,  
18 630-31 (9th Cir. 1987).

19  
20 **B. Discussion**

21 **1. Facts**

22 In its combined Cross-MSJ and Opposition to  
23 Plaintiff's MSJ, Defendant included its response to  
24 Plaintiffs' alleged undisputed facts and its  
25 Statement of Additional Undisputed Facts ("SAUF").  
26 To consider Defendant's Cross-MSJ, the Court relies  
27  
28

1 on Defendant's SAUF and Plaintiff's SAUF Response,  
2 which Plaintiff attached to his Opposition.

3  
4 Defendant stakes its Cross-MSJ on the assertion  
5 that the seven ADA-noncompliant barriers alleged by  
6 Plaintiff in his Complaint "either do not constitute  
7 disabled access barriers or even if they did at one  
8 time exist, they no longer do." (Cross-MSJ at 3.)  
9 In support of this defense, Defendant's SAUF alleges  
10 seven undisputed material facts, each of which  
11 provides a descriptive account (as of May 23, 2012)  
12 of the seven specific Store facilities, or properties  
13 thereof, that Plaintiff alleges are ADA-noncompliant.  
14 Plaintiff purports to dispute all seven of  
15 Defendant's SAUF facts.

16  
17 The Court assesses Defendant's SAUF, Plaintiff's  
18 SAUF Response, and both parties' supporting evidence  
19 to determine whether any genuine issue of material  
20 fact exists and, if one does not exist, whether  
21 Defendant is entitled to judgment as a matter of law.

22  
23 No genuine issue of material fact exists if the  
24 Court determines that Plaintiff's purported factual  
25 disputes fail to actually address Defendant's  
26 submitted facts or evidence but instead propound  
27 legal arguments as to the merits of the case.

1                   **a. Analysis of Alleged Disputed and**  
 2                   **Undisputed Facts**

3                   **i. SAUF Fact #1**

4                   The entrance strike side clearance to the men's  
 5                   restroom entry door at the Facility provides more  
 6                   than 18 [inches] of clear floor space in either  
 7                   direction of the restroom door, thereby providing  
 8                   sufficient maneuvering clearances. (SAUF ¶ 1; Wood  
 9                   Decl. ¶¶ 5-7, Exs. 2-9.)

10                  To SAUF Fact #1, Plaintiff responds, "Objection,  
 11                  irrelevant . . . . Plaintiff has alleged that 'There is  
 12                  insufficient strike side clearance when entering the  
 13                  restroom . . . ." (Response ¶ 1 (emphasis in original).)

14                  Plaintiff emphasizes, ostensibly for clarification,  
 15                  the language of his allegation, which does not differ  
 16                  from the language in SAUF Fact #1. This does not address  
 17                  what Plaintiff is disputing about Defendant's fact or  
 18                  evidence. Nor does the evidence Plaintiff points to (but  
 19                  does not attach as exhibits to his Opposition)<sup>6</sup> - three  
 20                  pictures of an unmarked door, two of which include a  
 21                  ruler below the handle. (*Id.* (citing Doc. No. 36, Ex. A  
 22                  at 3, Ex. B at 12).)

---

23                  <sup>6</sup> Cf. Local Rule 11-5.2 ("Unless compliance is  
 24                  impracticable, a paper exhibit shall be filed as an  
 25                  attachment to the document to which it relates and shall  
 26                  be numbered at the bottom of each page consecutively to  
 27                  the principal document. Exhibits filed electronically  
 28                  shall comply with this rule unless precluded by L.R. 5-  
 29                  4.3.1."). None of the evidence to which Plaintiff cites  
 30                  is attached to his Opposition. Plaintiff inexplicably  
 31                  cites to the Kohler Declaration attached to Plaintiff's  
 32                  MSJ rather than the Kohler Declaration attached to his  
 33                  Opposition.



1 The Court finds Plaintiff has failed to meet his  
2 burden of controverting SAUF Fact #1.

3  
4 **ii. SAUF Fact #2**

5 The exit strike side clearance to the men's  
6 restroom exit door at the Facility provides  
7 sufficient maneuvering clearances and does not  
8 contain a latching mechanism. (SAUF ¶ 2; Wood  
9 Decl. ¶¶ 5-7, Ex. 2-9.)

10 To SAUF Fact #2, Plaintiff first objects on the  
11 ground that Defendant is asserting compound facts. (SAUF  
12 Response ¶ 2.) Plaintiff is correct; the Court thus  
13 considers SAUF Fact #2 to assert separately that (1) the  
14 exit strike side clearance to the men's restroom exit  
15 door at the Store provides sufficient maneuvering  
16 clearance; and (2) the exit strike side of the men's  
17 restroom exit door does not contain a latching mechanism.

18 As to the first fact of SAUF #2, the Court notes the  
19 ambiguity of the assertion (primarily of the word  
20 "sufficient") and so, as a preliminary matter, must  
21 identify whether it is a fact or a legal conclusion. The  
22 alleged undisputed fact - that the strike side clearance  
23 to the restroom's exit door "provides sufficient  
24 maneuvering clearances" - tracks the language of the  
25 Kohler Declaration. (See Kohler Decl. ¶ 7(f) ("There is  
26 insufficient strike side clearance when exiting the  
27 restroom. This makes it difficult to maneuver out of the  
28 restroom.")) To support SAUF #2, Defendant cites to

1 various ADA guidelines and statements from its expert  
2 declarant, Larry Wood, regarding the specific ADA  
3 requirements and the Store's compliance therewith. (Wood  
4 Decl. ¶¶ 5-7, Ex. 2-9.)

5  
6 The language of SAUF #2 and Defendant's supporting  
7 evidence indicate that "sufficient maneuvering clearance"  
8 refers to the Store's compliance with the specific  
9 dimensions required by the ADA standards, i.e.,  
10 "sufficient" is synonymous with "equal to or greater than  
11 the 18 inches of maneuvering space required by the ADA  
12 standards." As discussed below, the parties dispute the  
13 definition of "maneuvering space." Plaintiff does not  
14 dispute that there is a sufficient amount of space using  
15 Defendant's definition; Defendant does not dispute that  
16 there is an insufficient amount of space using  
17 Plaintiff's definition. Thus, the Court finds that SAUF  
18 #1's use of the word "sufficient" only refers to the  
19 definition of "maneuvering space" accepted by Defendant.  
20 As such, no legal conclusion is called for, and  
21 Plaintiff's response and evidence do not dispute the  
22 fact. The Court finds the first subpart of SAUF #2 to be  
23 uncontroverted.<sup>7</sup>

24  
25 <sup>7</sup> Some ambiguity also stems from Plaintiff's  
26 disputing the fact with reference to Mr. Kohler's  
27 declaration, in which Mr. Kohler states that  
28 "insufficient strike side clearance . . . makes it  
difficult to maneuver out of the restroom." (Kohler  
Decl. ¶ 7(f).) Mr. Kohler's statement would dispute  
(continued...)

1 As to the second fact of SAUF #2 (the door "does not  
 2 contain a latching mechanism"), Plaintiff objects on the  
 3 ground that "[w]hat constitutes a latch requires a legal  
 4 argument and will be addressed in plaintiff's  
 5 opposition." (SAUF Response ¶ 2.) Plaintiff does not  
 6 assert in his Response that the door does contain a  
 7 "latch" under any definition, and no such assertion is  
 8 made in or supported by Plaintiff's submitted evidence.<sup>8</sup>

9  
 10  
 11 Hence, the Court finds Plaintiff has failed to meet  
 12 his burden with respect to the second subpart of SAUF  
 13 Fact #2 and finds all of SAUF Fact #2 uncontroverted.

14  
 15 **iii. SAUF Facts #3**

16 The men's restroom stall door in the Facility has  
 17 a 'U' shaped handle mounted below the latch on  
 18 both sides. (SAUF ¶ 3; Wood Decl. ¶ 8; Duskin  
 Decl. ¶ 2, Ex. 1.)

19  
 20  
 21 <sup>7</sup>(...continued)  
 22 Defendant's alleged fact if "sufficient maneuvering  
 23 clearance" were interpreted to mean clearance sufficient  
 24 for Plaintiff to maneuver without difficulty. That  
 interpretation, though, would lead to the disputed fact  
 25 being immaterial, as it would not be tied to the  
 dispositive issue of what the ADA requires and whether  
 the Store satisfied the requirements.

26 <sup>8</sup> The one reference to "latch" in the evidence  
 27 Plaintiff cites is in the Kohler Declaration and refers  
 to the stall door, not the restroom exit door, and is  
 28 mentioned incidentally to describe the relative location  
 of a separate alleged barrier. (Kohler Decl. ¶ 7(g).)

1 Plaintiff submits clear photographic evidence that,  
2 on May 2, 2012, the "U"-shaped handle in the restroom  
3 stall was mounted *above* the latch. (P.'s MSJ, Ex. B at  
4 7.) Defendant submits clear photographic evidence that,  
5 on May 23, 2012, the "U"-shaped handle in the restroom  
6 stall was mounted *below* the latch. (Duskin Decl. ¶ 2, Ex.  
7 1.)

8  
9 The Court finds Plaintiff has failed to meet his  
10 burden of controverting SAUF Fact #3.

11  
12 **iv. SAUF Fact #4**

13 There are two (2) toilet tissue rolls mounted in  
14 the men's restroom of the Facility, the first of  
15 which is mounted within 12 inches of the front of  
the water closet. (SAUF ¶ 4; Wood Decl. ¶ 9, Ex.  
10.)

16  
17 As with his Response to SAUF Fact #1, Plaintiff  
18 objects to SAUF Fact #4 because he alleges it is  
19 "irrelevant," (Response ¶ 4), but does not otherwise  
20 dispute or offer evidence to dispute the fact.

21  
22 The Court finds Plaintiff has failed to meet his  
23 burden of controverting SAUF Fact #4.

24  
25 **v. SAUF Fact #5**

26 No operable part of the paper towel dispenser in  
27 the men's restroom of the Facility is mounted  
higher than 40 inches above the finished floor.  
(SAUF ¶ 5; Wood Decl. ¶ 10; Duskin Decl. ¶ 3, Ex.  
28 2.)

1  
2 Plaintiff submits clear photographic evidence that,  
3 on May 2, 2012, an operable part of the paper towel  
4 dispenser was mounted higher than 40 inches above the  
5 floor. (P.'s MSJ, Ex. B at 9.) Defendant submits clear  
6 photographic evidence that, on May 23, 2012, no operable  
7 part of an added paper towel dispenser was mounted higher  
8 than 40 inches above the floor. (Duskin Decl. ¶ 3, Ex.  
9 2.)

10  
11 The Court finds Plaintiff has failed to meet his  
12 burden of controverting SAUF Fact #5.

13  
14 **vi. SAUF Fact #6**

15 The paper towel dispenser in the men's restroom of  
16 the Facility does not require tight grasping,  
17 pinching, or twisting of the wrist to operate;  
18 rather, the mechanism can be operated with a  
19 closed fist. (SAUF ¶ 6; Wood Decl. ¶ 11; Duskin  
20 Decl. ¶ 3, Ex. 2.)

21 Both parties submit the same evidence for SAUF Fact  
22 #6 as for SAUF Fact #5. The Court finds Plaintiff has  
23 failed to meet his burden of controverting SAUF Fact #6.

24 **vii. SAUF Fact #7**

25 All undersink pipes in the men's restroom at the  
26 Facility are completely wrapped and insulated.  
27 (SAUF ¶ 5; Wood Decl. ¶ 12, Ex. 11.)

28 Plaintiff submits clear photographic evidence that,  
on May 2, 2012, a small portion of one undersink pipe was

1 exposed. (P.'s MSJ, Ex. B at 3.) Defendant submits clear  
2 photographic evidence that, on May 23, 2012, all  
3 undersink pipes were completely wrapped and insulated.  
4 (Wood Decl. ¶ 12, Ex. 11.) The Court finds Plaintiff has  
5 failed to meet his burden of controverting SAUF Fact #7.

6  
7 **b. Conclusion**

8 The Court finds all seven facts set forth in  
9 Defendant's SAUF to be uncontroverted by Plaintiff's SAUF  
10 Response and supporting evidence. Thus, disposition of  
11 Defendant's Cross-MSJ turns solely on whether Defendant  
12 is entitled to judgment as a matter of law.

13  
14 **2. Judgment as a Matter of Law**

15 **a. ADA Requirements for Restroom Strike Side**  
16 **Clearance**

17 The parties dispute the meaning of the ADA's  
18 requirement for door clearances and, by extension,  
19 whether or not a barrier exists in violation of the ADA.

20  
21 For physical structures to comply with the ADA, they  
22 must meet the requirements set forth in the ADA  
23 Accessibility Guidelines for Buildings and Facilities  
24 ("ADAAG").<sup>9</sup> The disputed question of law here pertains

25 \_\_\_\_\_  
26 <sup>9</sup> The ADAAG "contains scoping and technical  
27 requirements for accessibility to buildings and  
28 facilities by individuals with disabilities . . . [that]  
are to be applied during the design, construction, and  
(continued...)

1 to ADAAG § 4.13.6 and its accompanying illustration,  
 2 Figure 25. Section 4.13.6 sets forth the following:

3 **Maneuvering Clearances at Doors.** Minimum  
 4 maneuvering clearances at doors that are not  
 5 automatic or power-assisted shall be as shown in  
 Fig. 25. The floor on ground area within the  
 required clearances shall be level and clear.

6 Figure 25 contains diagrams illustrating the  
 7 maneuvering clearances required for the two sides of  
 8 different kinds of doors and approaches. The Figure 25  
 9 diagram at issue here pertains to the pull-side, front  
 10 approach of swinging doors. (See Fig. 25, Diagram (a),  
 11 attached to this Order as "Appendix".) The note  
 12 corresponding to Figure 25, Diagram (a), states, "Front  
 13 approaches to pull side of swinging doors shall have  
 14 maneuvering space that extends 18 in (455 mm) minimum  
 15 beyond the latch side of the door and 60 in (1525 mm)  
 16 minimum perpendicular to the doorway."

17  
 18 The types of lines used in the diagram - e.g., solid  
 19 versus dotted lines - and their respective meanings are  
 20 explained in ADAAG § 3, Table 1 ("Graphic Conventions").  
 21 (See Appendix.)  
 22  
 23  
 24

---

25 <sup>9</sup>(...continued)  
 26 alteration of buildings and facilities covered by titles  
 27 II and III of the ADA to the extent required by  
 28 regulations issued by Federal agencies, including the  
 Department of Justice and the Department of  
 Transportation, under the ADA." ADAAG § 1.

1 Plaintiff relies on the language of ADAAG § 4.13.6  
 2 and Figure 25, Diagram (a) to argue that the ADA requires  
 3 "between 12 and 18 inches of clearance on the strike side  
 4 wall of restroom doors." (Opp'n at 2 (emphasis added).)  
 5 Defendant argues that ADAAG § 4.13.6 establishes no  
 6 requirement regarding walls but rather sets the standard  
 7 only for "clear floor space to allow for a wheelchair to  
 8 maneuver around a swing-out door." (Cross-MSJ at 3  
 9 (emphasis in original).) For Defendant to be entitled to  
 10 judgment as a matter of law here, the Court must find  
 11 that ADAAG § 4.13.6 does not set a standard for the  
 12 length of a wall adjacent to a restroom stall door.

13  
 14 Another court in this district recently addressed the  
 15 question of § 4.13.6's requirements. See Rush v. Denco  
 16 Enterprises, Inc., ---F. Supp. 2d---, 2012 WL 1423584,  
 17 (C.D. Cal. Apr. 24, 2012).<sup>10</sup> There, in support of his

18  
 19 <sup>10</sup> Pursuant to Federal Rule of Evidence 201,  
 20 Defendant's Cross-MSJ included a request for judicial  
 21 notice of the Rush docket, which Defendant attached as  
 22 "Exhibit 1" to its motion, and Defendant's Kenefick  
 23 Declaration included requests for judicial notice of the  
 24 Rush plaintiff's second amended complaint and the Rush  
 25 defendant's submitted declarations, which Defendant  
 26 attached to the Kenefick Declaration as Exhibits 2-5. As  
 27 these requests complied with Rule 201, the Court  
 28 accordingly takes notice of the provided documents.

Plaintiff likewise seeks to direct the Court's  
 attention to adjudicative facts, namely a declaration  
 submitted in a prior case (see Opp'n at 7-8) and a  
 document submitted by the Rush defendant (see id. at 7).  
 Plaintiff failed to request judicial notice as to both  
 documents and failed to supply the Court with a copy of  
 the Rush document, as required by Rule 201. The Court  
 declines to take judicial notice on its own of these

(continued...)



1 reliance on Rush, the plaintiff primarily cites to the  
2 following discussion, where the district court granted  
3 the plaintiff's motion for summary judgment as to her §  
4 4.13.6 claim:

5       The only potential dispute is whether  
6 Plaintiff's allegations regarding strike side  
7 clearance describe an architectural barrier in  
8 violation of ADAAG regulations.

9       ADAAG Regulation 4.13.6 governs "Maneuvering  
10 Clearances at Doors" and provides that "minimum  
11 maneuvering clearances at doors that are not  
12 automatic or power-assisted shall be as shown in  
13 Fig. 25." Fig. 25, reproduced by Plaintiff in  
14 her Motion for Summary Judgment, provides that  
15 there must be at least 18 inches on the strike  
16 side wall of a "pull" door, although 24 inches  
17 is preferred. According to Plaintiff's  
18 Declaration, the strike side wall on the pull  
19 door to exit the women's restroom provides  
20 clearance of less than eleven inches. As such,  
21 it is in violation of ADAAG regulations and  
22 considered a barrier to access.

23 Id. at \*4 (emphasis added) (citations to the record  
24 omitted).

25       Although Defendant contends that "the facts [in Rush]  
26 are markedly different from the situation presented  
27 here," (Cross-MSJ at 9), the main factual distinction  
28 between the cases is a minor one: a pull-side door was at  
issue in Rush whereas a push-side door is at issue here.  
Defendant does not explain why this distinction would be  
salient to determining the meaning of § 4.13.6.

---

<sup>10</sup>(...continued)  
documents. See Fed. R. Evid. 201(c)(1-2).

1        Nevertheless, Defendant points out legitimate reasons  
2 for the Court to decline to treat the above-quoted  
3 passage from Rush as a legal finding as to the meaning of  
4 § 4.13.6. These reasons are clear from the explanation  
5 provided in Rush as to why the court granted Plaintiff's  
6 motion:

7            Plaintiff has thus established a prima facie  
8 case of discrimination, at which point the burden  
9 shifts to Defendant to rebut Plaintiff's evidence.  
10 Defendant's "opposition" does not challenge any of  
11 Plaintiff's facts. Defendant hints at a dispute of  
12 law by stating that the "undersigned believes  
13 there is no requirement for the longer wall  
14 Plaintiff appears to be seeking." Even at oral  
15 argument, Defendant did not point to any law or  
16 facts to rebut Plaintiff's prima facie case . . .  
17 . Defense counsel's unsupported musing is far  
18 from sufficient to rebut Plaintiff's prima facie  
19 case.

20            Defendant cannot simply submit a completely  
21 conclusory and entirely insufficient Rule 56(e)  
22 motion as its opposition and expect it to  
23 successfully oppose a Motion for Summary Judgment  
24 when Plaintiff has pled a prima facie case of  
25 discrimination. . . . This was the time for  
26 Defendant to submit his evidence to disprove  
27 Plaintiff's one remaining claim; it failed to do  
28 so.

19 Id. at \*4-\*5.

21        The plaintiff's motion for summary judgment in Rush  
22 was effectively unopposed. Instead of attempting to  
23 assert genuine issues of material fact, the defendant  
24 argued for a continuance because it learned that  
25 "Plaintiff's definition of 'strike clearance' may differ  
26 from what is required by law" and wanted time to consult  
27 a Certified Access Specialist about the definition  
28

1 propounded by the plaintiff. Id. at \*2. In short, the  
2 defendant presented the court with no evidence or  
3 argument to dispute the plaintiff's definition of §  
4 4.13.6; this Court thus does not find Rush persuasive  
5 authority on the interpretation of § 4.13.6. As  
6 discussed below in the summary of evidence submitted by  
7 Defendant here, the defendant in Rush belatedly submitted  
8 evidence showing that § 4.13.6 does not refer to wall  
9 length. This submission was made in support of the  
10 defendant's motion for reconsideration, a matter still  
11 pending.

12  
13 Rush concerned the failure of a party to meet its  
14 burden rather than the substance of the ADA's  
15 requirements. The voluminous evidence before the Court  
16 here showing that § 4.13.6 does not pertain to wall  
17 length substantially distinguishes this matter from that  
18 presented in Rush.

19  
20 Plaintiff's primary contention is that the required  
21 length shown in Figure 25, Diagram (a), appears above a  
22 solid line, and the ADAAG uses dotted lines to represent  
23 the boundaries of clear floor area. (See Opp'n at 3;  
24 Table 1, Appendix.) Defendant counters that the figures  
25 in the ADAAG "are contextual only and do not contain  
26 dimensioned specifications." (Cross-MSJ at 3.)

1 While the Court does not presume anything in the  
2 ADAAG to be "contextual only" without clear evidence to  
3 that effect, Defendant provides substantial and varied  
4 evidence demonstrating that § 4.13.6 in fact only refers  
5 to clear floor space and sets no standard for wall  
6 length. For example, Defendant submits as follows:

- 7 • The findings and testimony of expert Larry Wood,  
8 a licensed architect and Certified Access  
9 Specialist whose practice "predominantly  
10 involves representing clients regarding  
11 compliance with the ADA." (Wood Decl. ¶¶ 2-7.)  
12 Mr. Wood testified that § 4.13.6 does not refer  
13 to wall length and that the Store, which he  
14 inspected, complied with § 4.13.6. (Id.)
- 15 • Three guides published by the Department of  
16 Justice and relied on by Mr. Wood to support the  
17 assertion that § 4.13.6 sets a standard for  
18 clear floor space only. (Wood Decl., Exs. 4-6.)
- 19 • Two California Building Code manuals relied on  
20 by Mr. Wood to support the assertion that  
21 § 4.13.6 sets a standard for clear floor space  
22 only. (Wood Decl., Exs. 8-9.)
- 23 • An excerpt from the United States Access Board's  
24 Scoping and Technical Requirements clarifying  
25 that § 4.13.6 requires clear floor space in  
26 proximity to the "wall plane" to ensure adequate  
27  
28

1 space for someone in a wheelchair to maneuver  
2 through the door at an angle. (Cross-MSJ at 5.)

- 3 • The declaration of Certified Access Specialist  
4 Karen O'Rourke Haney submitted to the Rush court  
5 after it granted summary judgment, stating:

6 As a Certified Access Specialist  
7 ("CASp"), I am concerned about any  
8 situation in which a litigant submits  
9 information to a court about conditions  
10 which causes the court to conclude said  
11 conditions are improper if they are not,  
12 in fact, improper, because such a  
13 decision could be used as precedent to  
14 seek damages and injunctive relief at  
15 other properties where the relevant  
16 conditions comply with applicable law.

17 I further understand that the Court's  
18 conclusion may be based in part on  
19 Plaintiff's belief that any applicable  
20 standard for "strike clearance" would  
21 require the wall immediately adjacent to  
22 the side of a door which opens to be any  
23 particular length; I have reviewed this  
24 issue extensively and believe that there  
25 is no [ADA] requirement for the length of  
26 such a wall . . . . Rather, the "strike  
27 clearance" is the clear floor space  
28 located adjacent to the hardware side of  
the door to allow for proper wheelchair  
maneuvering clearance.

20 (Haney Decl. ¶¶ 5-6, attached to Kenefick Decl. as Ex.  
21 2.)

- 22 • Two additional declarations submitted in  
23 Rush by two other Certified Access  
24 Specialists reaching the same conclusions as  
25 Ms. Haney. (E.g., Heller Decl., ¶ 3,  
26 attached to Kenefick Decl. as Ex. 3 ("The  
27 purpose of this declaration is to confirm  
28

1           that in the entirety of my professional  
2           experience I am aware of no such requirement  
3           and do not believe that any such requirement  
4           exists— . . . there is no requirement that a  
5           wall immediately adjacent to the opening  
6           side of a door be of any particular  
7           length."); Argueta Decl., ¶ 3, attached to  
8           Kenefick Decl. as Ex. 4 (stating the same).)

9  
10  
11          The evidence before the Court conclusively  
12 demonstrates that, as a matter of law, § 4.13.6 is  
13 unrelated to wall length, eliminating any chance of a  
14 reasonable jury finding that Plaintiff's alleged barrier  
15 exists, and, accordingly, the Court grants Defendant's  
16 Cross-Motion for Summary Judgment as to Plaintiff's §  
17 4.13.6 claim.

18  
19           **b. Remediated Barriers**

20          "Because a private plaintiff can sue only for  
21 injunctive relief (i.e., for removal of the barrier)  
22 under the ADA, a defendant's voluntary removal of alleged  
23 barriers prior to trial can have the effect of mootng a  
24 plaintiff's ADA claim." Oliver v. Ralphs Grocery Co.,  
25 654 F.3d 903, 905 (9th Cir. 2011).

1 Plaintiff's counsel has had summary judgment granted  
2 against his client in numerous recent lawsuits on the  
3 ground that the alleged barrier had been remedied, thus  
4 mooting the plaintiff's claim.<sup>11</sup> There is no case  
5 authority supporting his contention that "proof of  
6 alterations [made by a defendant to cure ADA violations]  
7 creates a dispute of material fact as a matter of law . .  
8 . which preclude[s] summary judgment." (Opp'n at 10.)  
9 For this novel proposition, Plaintiff's counsel  
10 misguidedly quotes one out-of-context sentence from an  
11 unpublished 2005 order rejecting *his* motion for summary  
12 judgment. (See id.)

13  
14 The Court rejects Plaintiff's proffered  
15 interpretation of the law on the ground that it is not  
16 supported by either legal authority or common sense. The  
17 Court thus finds moot Plaintiff's claims for injunctive  
18 relief as to alleged barriers that no longer exist.

19  
20 Likewise, the Court finds moot Plaintiff's claims for  
21 declaratory relief under the ADA as to the removed  
22 alleged barriers. As only injunctive relief is available

---

23  
24 <sup>11</sup> In the last year alone, such cases include  
25 Martinez v. Columbia Sportswear USA Corp., No. 10-CV-  
26 1333-GEB, 2012 WL 1640584 (E.D. Cal. May 9, 2012); Rush  
27 v. Gen. Growth Properties, Inc., No. 10-CV-06721-DDP,  
28 2012 WL 1115518 (C.D. Cal. Apr. 3, 2012); Oliver v.  
Ralphs Grocery Co., 654 F.3d 903 (9th Cir. 2011); Chapman  
v. Chevron Stations, Inc., 09-CV-1324-AWI, 2011 WL  
4738309 (E.D. Cal. Oct. 5, 2011).

1 under the ADA, this is not a case where "declaratory  
2 judgment could help to remedy the effects of the  
3 [defendant's] statutory violations," nor is it a case  
4 where such relief is necessary "to ensure that similar  
5 violations [do] not occur in the future." Forest  
6 Guardians v. Johanns, 450 F.3d 455, 462-63 (9th Cir.  
7 2006).

8  
9 The Court finds summary judgment appropriate for all  
10 of Plaintiff's alleged barriers that Defendant has since  
11 removed.

12  
13 **c. Toilet Tissue Rolls**

14 Plaintiff's remaining claim alleges that Defendant is  
15 in violation of the ADA requirement that, according to  
16 Plaintiff, "all toilet tissue dispensers shall be  
17 installed 'within reach' of the toilet." (Opp'n at 8.)  
18 In California, "within reach" as required by ADAAG §  
19 4.16.6 is defined as "within 12 inches of the front edge  
20 of the toilet seat." (See id. (citing Cal. Building Code  
21 § 1115(b)(9)(3)).) The Store's restroom stall at issue  
22 has a toilet tissue dispenser that is within 12 inches of  
23 the front edge of the toilet seat, and an extra dispenser  
24 that is not. (Id.; Cross-MSJ at 10-11.) Plaintiff  
25 states that he would be satisfied as to this alleged  
26 barrier if Defendant removed the spare roll of toilet



1 tissue from the restroom stall. (See Kohler Dep. at  
2 70:1-6, attached to Kenefick Decl. as Ex. 1.)

3  
4 Plaintiff's claim is mooted as no barrier exists.

5  
6 **IV. PLAINTIFF'S STATE CLAIMS**

7 A district court may decline to exercise  
8 supplemental jurisdiction over a state claim if "the  
9 district court has dismissed all claims over which it has  
10 original jurisdiction." 28 U.S.C. § 1367(c)(3).  
11 "The Supreme Court has stated, and we have often  
12 repeated, that 'in the usual case in which all federal-  
13 law claims are eliminated before trial, the balance of  
14 factors . . . will point toward declining to exercise  
15 jurisdiction over the remaining state-law claims.'" Acri  
16 v. Varian Associates, Inc., 114 F.3d 999, 1001 (9th Cir.  
17 1997) (quoting Carnegie-Mellon Univ. v. Cohill, 484 U.S.  
18 343, 350 n. 7 (1988)).

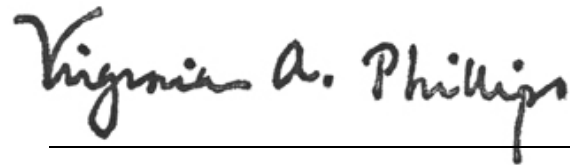
19  
20 After considering the jurisdictional principles of  
21 judicial economy, procedural convenience, fairness to  
22 litigants, and comity, the Court finds it appropriate to  
23 decline supplemental jurisdiction over Plaintiff's  
24 remaining state law claims. See id. at 343.

**V. CONCLUSION**

For the foregoing reasons, the Court:

- (1) Finds Plaintiff had standing as to each of his claims under the ADA;
- (2) GRANTS Defendant's Cross-Motion for Summary Judgment on Plaintiff's ADA claims; and
- (3) DISMISSES WITHOUT PREJUDICE Plaintiff's state claims under 28 U.S.C. § 1367(c)(3).

Dated: June 27, 2012



VIRGINIA A. PHILLIPS  
United States District Judge